

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PHILIPS RECALLED CPAP, : Master Docket: Misc. No. 21-mc-1230-JFC
BI-LEVEL PAP, AND MECHANICAL :
VENTILATOR PRODUCTS : MDL No. 3014
LITIGATION :
This Document Relates to: :
David Osterhout and Betsy Osterhout :
:**

**SHORT FORM COMPLAINT FOR
PERSONAL INJURIES, DAMAGES,
AND DEMAND FOR JURY TRIAL**

2:23-CV-943

Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the “Master Long Form Complaint”). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the Master Long Form Complaint.

Plaintiff(s) further allege(s) as follows:

I. DEFENDANTS

1. Plaintiff(s) name(s) the following Defendants in this action:

- Koninklijke Philips N.V.
- Philips North America LLC.
- Philips RS North America LLC.

- Philips Holding USA Inc.
- Philips RS North America Holding Corporation.
- Polymer Technologies, Inc.
- Polymer Molded Products LLC.

II. PLAINTIFF(S)

2. Name of Plaintiff(s):
David Osterhout

3. Name of spouse of Plaintiff (if loss of consortium claim is being made):
Betsy Osterhout

4. Name and capacity (*i.e.*, executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any:
N/A

5. State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):
Colorado

III. DESIGNATED FORUM

6. Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:
District Court of Colorado - Denver, CO

IV. USE OF A RECALLED DEVICE

7. Plaintiff used the following Recalled Device(s):

<input type="checkbox"/> E30 (Emergency Use Authorization)	<input type="checkbox"/> Dorma 500
<input type="checkbox"/> DreamStation ASV	<input type="checkbox"/> REMstar SE Auto
<input type="checkbox"/> DreamStation ST, AVAPS	<input type="checkbox"/> Trilogy 100
<input type="checkbox"/> SystemOne ASV4	<input type="checkbox"/> Trilogy 200
<input type="checkbox"/> C-Series ASV	<input type="checkbox"/> Garbin Plus, Aeris, LifeVent
<input type="checkbox"/> C-Series S/T and AVAPS	<input type="checkbox"/> A-Series BiPAP Hybrid A30 (not marketed in U.S.)
<input type="checkbox"/> OmniLab Advanced +	<input type="checkbox"/> A-Series BiPAP V30 Auto
<input type="checkbox"/> SystemOne (Q-Series)	<input type="checkbox"/> A-Series BiPAP A40
<input checked="" type="checkbox"/> DreamStation	<input type="checkbox"/> A-Series BiPAP A30
<input type="checkbox"/> DreamStation Go	<input type="checkbox"/> Other Philips Resironics Device; if other, identify the model: _____
<input type="checkbox"/> Dorma 400	

V. INJURIES

8. Plaintiff alleges the following physical injuries as a result of using a Recalled Device together with the attendant symptoms and consequences associated therewith:

- COPD (new or worsening)
- Asthma (new or worsening)
- Pulmonary Fibrosis
- Other Pulmonary Damage/Inflammatory Response
- Cancer _____ (specify cancer)
- Kidney Damage
- Liver Damage

Heart Damage

Death

Other (specify)

VI. CAUSES OF ACTION/DAMAGES

9. As to Koninklijke Philips N.V., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn
- Count V: Negligent Failure to Warn
- Count VI: Negligent Recall
- Count VII: Battery
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing
- Count X: Breach of Express Warranty
- Count XI: Breach of the Implied Warranty of Merchantability
- Count XII: Breach of the Implied Warranty of Usability
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation

- Count XV: Negligence Per Se
- Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- Count XXI: Punitive Damages
- Count XXII: Other [specify below]

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- 10. As to Philips North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn
- Count V: Negligent Failure to Warn
- Count VI: Negligent Recall
- Count VII: Battery
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing

- Count X: Breach of Express Warranty
- Count XI: Breach of the Implied Warranty of Merchantability
- Count XII: Breach of the Implied Warranty of Usability
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation
- Count XV: Negligence Per Se
- Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- Count XXI: Punitive Damages
- Count XXII: Other [specify below]

11. As to Philips RS North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn

- Count V: Negligent Failure to Warn
- Count VI: Negligent Recall
- Count VII: Battery
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing
- Count X: Breach of Express Warranty
- Count XI: Breach of the Implied Warranty of Merchantability
- Count XII: Breach of the Implied Warranty of Usability
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation
- Count XV: Negligence Per Se
- Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- Count XXI: Punitive Damages
- Count XXII: Other [specify below]

12. As to Philips Holding USA Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn
- Count V: Negligent Failure to Warn
- Count VI: Negligent Recall
- Count VII: Battery
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing
- Count X: Breach of Express Warranty
- Count XI: Breach of the Implied Warranty of Merchantability
- Count XII: Breach of the Implied Warranty of Usability
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation
- Count XV: Negligence Per Se
- Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring

- Count XXI: Punitive Damages
 Count XXII: Other [specify below]
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13. As to Philips RS North America Holding Corporation, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
 Count II: Strict Liability: Design Defect
 Count III: Negligent Design
 Count IV: Strict Liability: Failure to Warn
 Count V: Negligent Failure to Warn
 Count VI: Negligent Recall
 Count VII: Battery
 Count VIII: Strict Liability: Manufacturing Defect
 Count IX: Negligent Manufacturing
 Count X: Breach of Express Warranty
 Count XI: Breach of the Implied Warranty of Merchantability
 Count XII: Breach of the Implied Warranty of Usability
 Count XIII: Fraud
 Count XIV: Negligent Misrepresentation
 Count XV: Negligence Per Se

- Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- Count XXI: Punitive Damages
- Count XXII: Other [specify below]

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14. As to Polymer Technologies, Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn
- Count V: Negligent Failure to Warn
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation
- Count XVII: Unjust Enrichment

- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- Count XXI: Punitive Damages
- Count XXII: Other [specify below]

15. As to Polymer Molded Products LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- Count I: Negligence
- Count II: Strict Liability: Design Defect
- Count III: Negligent Design
- Count IV: Strict Liability: Failure to Warn
- Count V: Negligent Failure to Warn
- Count VIII: Strict Liability: Manufacturing Defect
- Count IX: Negligent Manufacturing
- Count XIII: Fraud
- Count XIV: Negligent Misrepresentation
- Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring

- Count XXI: Punitive Damages
- Count XXII: Other [specify below]
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16. If additional claims against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial are alleged above, the additional facts, if any, supporting these allegations must be pleaded. Plaintiff(s) assert(s) the following additional factual allegations against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial:

17. Plaintiff(s) contend(s) that additional parties may be liable or responsible for Plaintiff(s)' damages alleged herein. Such additional parties, who will be hereafter referred to as Defendants, are as follows (must name each Defendant and its citizenship):

18. Plaintiff(s) assert(s) the following additional claims and factual allegations against other Defendants named in Paragraph 17 above:

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Date: Jun 2 2023

/s/ Shanon J. Carson

Shanon J. Carson
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (800) 424-6690
scarson@bm.net

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Osterhout and Betsy Osterhout

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Sharon J. Carson, BERGER MONTAGUE PC
1818 Market Street, Suite 3600, Philadelphia, PA 19103
(215) 875-3000**DEFENDANTS**

Koninklijke Philips N.V., et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 791 Employee Retirement Income Security Act		<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | |
|--|---|--|---|--|--|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input checked="" type="checkbox"/> 6 Multidistrict Litigation |
|--|---|--|---|--|--|

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)
	Brief description of cause: Product liability claim arising out of the use of Philips recalled CPAP, Bi-Level PAP and Ventilator Product

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND:
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY	<i>(See instructions):</i>	JUDGE Hon. Joy Flowers Conti	DOCKET NUMBER 2:21-MC-01230

DATE	SIGNATURE OF ATTORNEY OF RECORD
06/02/2023	/s/ Shanon J. Carson

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFFP	JUDGE	MAG. JUDGE
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